

HOUSE No. 1460

By Representative Garry of Dracut and Senator Panagiotakos, joint petition of Colleen M. Garry and others relative to shared parenting in cases of divorce. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Colleen M. Garry	Paul C. Casey
Steven C. Panagiotakos	Anne M. Gobi
Todd M. Smola	Bradley H. Jones, Jr.
Dianne Wilkerson	Thomas J. Calter
David B. Sullivan	Christine E. Canavan
Robert K. Coughlin	Richard J. Ross
Thomas P. Kennedy	Lewis G. Evangelidis
F. Jay Barrows	John F. Quinn
Thomas A. Golden, Jr.	George N. Peterson, Jr.
Jeffrey Davis Perry	Pam Richardson
Joseph F. Wagner	Scott P. Brown
John J. Binienda	Denis E. Guyer
Geoffrey D. Hall	Thomas M. Stanley
Stephen M. Brewer	Stephen R. Canessa
John P. Fresolo	Robert L. Hedlund
Robert P. Spellane	Harold P. Naughton, Jr.
Patrick M. Natale	Michael E. Festa
Cory Atkins	Elizabeth A. Poirier
John A. Lepper	Paul J. P. Loscocco
Stephen P. LeDuc	Robert J. Nyman
Eric Turkington	Susan C. Fargo
David M. Nangle	Richard T. Moore

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO SHARED PARENTING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 31 of Chapter 208 of the General Laws, as
2 appearing in the most recent edition, is hereby amended in the sixth
3 paragraph by striking the following:— When considering the happy-
4 ness and welfare of the child, the court shall consider whether or not

5 the child's present or past living conditions adversely affect his
6 physical, mental, moral or emotional health.

1 SECTION 2. Said section 31 is hereby further amended by
2 inserting after the sixth paragraph the following new paragraph:— In
3 furtherance of the public policy that the happiness and welfare of
4 children is enhanced by frequent and continuing contact with both
5 their parents, upon the filing of an action in accordance with the pro-
6 visions of this section, section twenty eight of this chapter, or section
7 thirty-two of chapter two hundred and nine, the parents shall have
8 temporary shared legal custody and shared physical custody of any
9 minor child of the parties. In making an order or judgment relative to
10 the custody of a minor child, there shall be a presumption that,
11 absent emergency conditions, or abuse or neglect of said child, the
12 parents shall have shared legal custody and shared physical custody
13 of said child. The judge may enter any order or judgment for sole
14 legal custody for one parent and/or sole physical custody for one
15 parent if written findings are made setting forth the specific facts
16 supporting a determination that the child would be harmed as a
17 result of shared legal or shared physical custody. In making any
18 order or judgment concerning the parenting schedule of each parent
19 with a minor child, the rights of the parents, absent emergency,
20 abuse, or neglect of one of the parents, shall be held to be equal, and
21 the Court shall endeavor to maximize the exposure of the child to
22 each of the parents so far as the same is practicable. A change in the
23 availability of one or both parents to parent a minor child, and/or a
24 change in the developmental stage of a minor child, shall be pre-
25 sumed to constitute a material and substantial change in circum-
26 stances for the purposes of a complaint or counterclaim seeking to
27 modify a parenting schedule or parenting plan incorporated into a
28 judgment of divorce. Nothing herein shall be deemed to modify the
29 provisions of G.L. c.208, sec. 31A.

1 SECTION 3. Said section 31 is hereby further amended by
2 striking the following paragraphs:—

3 Upon the filing of an action in accordance with the provisions of
4 this section, section twenty-eight of this chapter, or section thirty-
5 two of chapter two hundred and nine and until a judgment on the
6 merits is rendered, absent emergency conditions, abuse or neglect,

7 the parents shall have temporary shared legal custody of any minor
8 child of the marriage; provided, however, that the judge may enter
9 an order for temporary sole legal custody for one parent if written
10 findings are made that such shared custody would not be in the best
11 interest of the child. Nothing herein shall be construed to create any
12 presumption of temporary shared physical custody.

13 In determining whether temporary shared legal custody would not
14 be in the best interest of the child, the court shall consider all rele-
15 vant facts including, but not limited to, whether any member of the
16 family abuses alcohol or other drugs or has deserted the child and
17 whether the parties have a history of being able and willing to coop-
18 erate in matters concerning the child.

19 If, despite the prior or current issuance of a restraining order
20 against one parent pursuant to chapter two hundred and nine A, the
21 court orders shared legal or physical custody either as a temporary
22 order or at a trial on the merits, the court shall provide written find-
23 ings to support such shared custody order.

24 There shall be no presumption either in favor of or against shared
25 legal or physical custody at the time of the trial on the merits, except
26 as provided for in section 31A.

1 SECTION 4. Said section 31 is hereby further amended in the
2 twelfth paragraph, in the third sentence, by inserting after the words
3 "The court may also reject the plan and issue a sole legal and" the
4 following:— /or sole

1 SECTION 5. Said section 31 is hereby further amended in the
2 twelfth paragraph, in the third sentence, by inserting after the words
3 "The court may also reject the plan and issue a sole legal and phys-
4 ical custody award to either parent" the following new words:- if
5 written findings are made, setting forth the specific facts supporting
6 a determiniation that the child would be harmed as a result of shared
7 legal or shared physical custody.

1 SECTION 6. Said section 31 is hereby further amended in the
2 twelfth paragraph by inserting after the words "A shared custody
3 implementation plan issued or accepted by the court shall become
4 part of the judgment in the action, together with any other appro-
5 priate custody orders and orders regarding the responsibility of the

6 parties for the support of the child.” the following new sentence:—
7 The failure of one or both parties, however, to submit a shared cus-
8 tody implementation plan for trial shall not diminish the presump-
9 tion of joint physical and joint legal custody, nor affect the child’s
10 right and the parents’ rights to frequent and continuing contact.

1 SECTION 7. Said section 31 is hereby further amended by
2 striking the fourteenth paragraph and inserting in place thereof the
3 following:— If shared physical custody is ordered, the judge shall at
4 that time make a child support order, or revise its previous order, as
5 appropriate to the circumstances.

1 SECTION 8. Said section 31 is hereby further amended, in the
2 last paragraph, by striking the words “specific findings are made by
3 the court indicating that such an order would not be in the best inter-
4 ests of the children” and inserting in place thereof the following:—
5 written findings are setting forth the specific facts supporting a
6 determination that the child would be harmed as a result of imple-
7 mentation of the agreement.